

DYCO PETROLEUM CORP.

IBLA 87-222

Decided May 16, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, increasing the annual rental for noncompetitive oil and gas lease. W-67754.

Reversed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Regulations: Applicability

A regulation requiring an increased rental rate of \$2 per acre for reinstated leases found to be within a KGS which was not in effect at the time a lease was reinstated does not become a provision of the reinstated lease and does not apply to the lease.

APPEARANCES: Carroll T. Rouse, Vice President, for Dyco Petroleum Corporation.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Dyco Petroleum Corporation has appealed a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 4, 1986, which increased the annual rental for noncompetitive, nonproducing oil and gas lease W-67754. ^{1/} The basis for BLM's decision was a determination that the leased lands are within the Washakie Basin Known Geologic Structure (KGS) effective June 14, 1984.

Although it appears that BLM correctly determined that, except for sec. 34, T. 23 N., R. 91 W., the leased lands are within the Washakie Basin KGS, our review of the case file has disclosed that the increased rental cannot properly be imposed on the lessee. The reason for our decision is best understood by reviewing the history of the lease, the lease terms, and the applicable regulations.

^{1/} The lease is for 2558.15 acres, more or less, consisting of lots 1 through 4, the S\ N\, and the S\ of sec. 2, sec. 12, and sec. 24, T. 22 N., R. 91 W., and sec. 34, T. 23 N., R. 91 W., sixth principal meridian, Sweetwater County, Wyoming.

Oil and gas lease W-67754 was originally issued to Robert E. Bennett with an effective date of June 1, 1979. By two assignments approved effective July 1, 1979, the lease was assigned first to James D. Nelsen and then to Dyco Petroleum Corporation. The rental provision of the lease set forth the following terms:

(a) If the lands are wholly outside the known geologic structure of a producing oil or gas field:

(i) For each lease year a rental of \$1.00 per acre or fraction of an acre.

(b) If the lands are wholly or partly within the known geologic structure of a producing oil or gas field:

(i) Beginning with the first lease year after 30 days' notice that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the lands leased, \$2 per acre or fraction of an acre.

The lease also called for a royalty on production of 12-1/2 percent. These terms were in accord with the regulations then in effect. 43 CFR 3103.3-2, 3103.3-4 (1979).

In 1983 the annual rental payment for the lease was not timely received and the lease terminated by operation of law. 30 U.S.C. | 188(b) (1982). By decision dated November 9, 1983, BLM granted Class II reinstatement of the lease. See 30 U.S.C. | 188(d) (1982). As part of the application for reinstatement Dyco executed a "Consent to New Lease Terms" which provided: "For this noncompetitive oil and gas lease (issued pursuant to Sec. 17(c) of the Act), all future rentals will be at the rate of \$5.00 per acre or fraction thereof, per year. Future royalties will be paid at a rate of 16 2/3%." The increased rental and royalty rates were required by the recently enacted statute which provided for Class II reinstatement. P.L. No. 97-451, Title IV, | 401, 96 Stat. 2463-64 (codified at 30 U.S.C. | 188(e) (1982)).

Following reinstatement of the lease, appellant made timely rental payments. By notice dated October 2, 1986, BLM informed appellant that

all or part of the lands in oil and gas lease W-67754 are within the Washakie Basin Known Geologic Structure (KGS) designated effective June 14, 1984. A KGS designation results in an increase of rental on a noncompetitive lease to \$2.00 per acre, or fraction thereof, unless the lease is subject to a greater rate subsequent to the designation.

Because the rental rate for this lease is now greater than \$2.00, this notice is for your information only.

However, one month later BLM issued the decision on appeal, informing appellant:

Oil and gas lease W-67754 was reinstated June 1, 1983, under the Class II provisions of Title IV of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451. Under regulation 43 CFR 3103.2-2(j), annual rental shall be an additional \$2.00 per acre for leases reinstated under Class II when lands in a lease are later determined to be within a Known Geologic Structure. Therefore, our notice of October 2, 1986, was in error in advising you that the KGS designation would have no effect upon the rental for lease W-67754.

The decision additionally stated that for subsequent lease years the rental rate would be \$7 per acre or fraction thereof.

[1] BLM's decision accurately summarizes the relevant sentence of 43 CFR 3103.2-2(j). However, the regulation does not apply to appellant's lease. It was not in effect at the time the lease was reinstated in November 1983. See 48 FR 33648, 33652, 33667-68 (July 22, 1983), cf. Federal Energy Corp., 51 IBLA 144, 145 (1980). Although Congress enacted the statute authorizing Class II reinstatements in January of 1983, corresponding additions to the regulations did not become effective until August 29, 1984. 49 FR 30446, 30448 (July 30, 1984). Unlike the increased rental rate of \$5 per acre for reinstated leases which was mandated by the statute and agreed to by appellant as a condition of reinstatement of the lease, the requirement for additional rental of \$2 per acre for leases found to be within a KGS after reinstatement was not established by statute but by rulemaking, was not in effect at the time of reinstatement, and did not become a provision of the lease. Cf. Piceance Partners, 82 IBLA 101 (1984); Dyco Petroleum Corp., 81 IBLA 65 (1984). Accordingly, the requirement does not apply to appellant's lease. It would only apply to leases reinstated after August 28, 1984.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is reversed.

Will A. Irwin
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge